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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

D& M NEW WORLD MANAGEMENT, INC.,

Opposer,

v.

Opp. No. 91162831 Mark: BLACK STORK Ser. No. 76/521,791

TORGOVY DOM "AROMA" TA TRADE HOUSE "AROMA,"

Applicant.

OPPOSER'S CROSS-MOTION FOR SUMMARY JUDGMENT IN RESPONSE TO APPLICANT'S MOTION FOR JUDGMENT FOR OPPOSER'S FAILURE TO PROVE THE CASE

Opposer, D & M NEW WORLD MANAGEMENT, INC., through its undersigned counsel respectfully moves the honorable Trademark Trial and Appeal Board to grant its Cross-Motion for Summary Judgment against Applicant.

Opposer has not taken testimony to date because it did not believe it was fair to waste either its client's time and money or the Board's time on a case where the facts are so patently obvious. Moreover, Applicant's attorney, Marina E. Volin, Esq., was provided with documentation of Opposer's rights, namely letters from the Moldova manufacturer that Opposer was the official distributor of BLACK STORK brandy and Applicant was not a licensed distributor of its product, before this Opposition was ever filed. See Exhibit A. Opposer has shown Applicant numerous invoices for the sale of



BLACK STORK brandy in the United States in November 2002 which pre-date

Applicant's filing of its intent to use application for BLACK STORK by almost seven

months. Ex. C. After filing Opp. No. 91162831, Opposer readily provided answers to

Applicant's three separate, piecemeal requests showing 1) its Certificate of Goods Origin

dated October 9, 2002 for the export of 600 bottles of BLACK STORK brandy

shipped to Opposer and the matching Bill of Lading 2) Opposer's Application for and

Certification of Label/Bottle Approval for BLACK STORK dated September 27, 2002

3) Five distributors with telephone numbers for Opposer's BLACK STORK brandy

in the United States. See Exhibit B.

Much to Opposer's bafflement, Applicant continued to insist that these 600 bottles might be merely "token use." It is preposterous to pretend that quantity of brandy was shipped for personal consumption. While Opposer's attorney appreciates zealous advocacy as much as any other practitioner, it is submitted that this was the equivalent of continuing to insist the world is flat in the face of Galileo's proof. Evidence of prior use by Opposer of the BLACK STORK mark for brandy in the United States has been shown clearly and conclusively to Applicant's attorney. When Opposer provided answers to Applicant's interrogatories and document requests Applicant was able to see evidence of BLACK STORK advertising, further BLACK STORK invoices and media coverage. Applicant continued to express concerns about "token use." It is clearly established legal precedent that a corporation need not spend or sell the equivalent of General Motors in sales to be considered a commercial entity.

In Opposer's view, the case for Applicant to have its intent to use

application for BLACK STORK rejected in light of Opposer's prior use and substantial sales of brandy under that mark has been made clearly and convincingly. Applicant filed its application, Ser. No. 76/521,791, June 10, 2003 but Opposer made sales of BLACK STORK brandy in the United States from November 27, 2002 to date. Opposer applied for label approval of BLACK STORK brandy on September 27, 2002. Opposer has shown Applicant its Letter of Appointment by the Moldovan manufacturer of BLACK STORK brandy with its official corporate seal. Exhibit A. Opposer has also shown Applicant's counsel a letter dated October 6, 2003 from this same Moldavan manufacturer stating "Trade House "Aroma" located at Beregovoi, 5 str. Moscow, Russia has no rights at all sell (sic) and to register Trademark "Black Stork" in the United States of America not (sic) in any other countries." Exhibit A. While Opposer has taken all the necessary steps to import BLACK STORK brandy from Moldava including label approval, obtaining a Letter of Appointment and arranging the shipments, it does not understand how Applicant can pretend it is anything other than an unlicensed junior user of BLACK STORK. With the invoices shown to Applicant, there is a clear demonstration of sales of BLACK STORK brandy by Opposer prior to Applicant even filing its U.S. trademark application. Exhibit C.

Thus, Opposer firmly opposes Applicant's Motion Pursuant to Trademark Rule 2,132(a) for Judgment for Opposer's Failure to Prove the Case and makes this Cross-Motion for Summary Judgment in the good faith that Applicant and its counsel saw more than enough evidence already to understand that Opposer is the prior user of BLACK STORK brandy. Applicant's persistence in believing that the case has not been

proved fully wastes the time and money of all the parties concerned. The facts are not difficult to establish. The shipment dates are verifiable as are the invoice dates. Applicant had this evidence before it made its Motion. Lengthy depositions of Opposer's officers would not add any important facts. Applicant does not need to see every BLACK STORK invoice of Opposer to be aware that it is the junior, unlicensed user of the mark. Opposer is convinced that even with a mountain of evidence, Applicant would try to pick holes in it. This should not be tolerated. Where cases are relatively straight-forward, time should not be wasted, for the sake of all the parties concerned including the TTAB, in heaps of inapposite testimony, interrogatories and document requests. Here the prior use by Opposer of BLACK STORK brandy is unequivocal.

WHEREFORE, Opposer requests that this Cross-Motion for Summary Judgment be granted and the application Ser. No. 76/571,791 of Applicant be denied registration.

November 30, 2005

Respectfully submitted,

Gail E. Nickols

Attorney for Opposer

GRAHAM CAMPAIGN, P.C.

36 West 44th Street, #1207

New York, NY 10036

(212)-354-5650

CERTIFICATE OF SERVICE

I hereby certify that one original and two copies of the foregoing Opposer's Cross-Motion for Summary Judgment in Response to Applicant's Motion for Judgment For Opposer's Failure to Prove the Case in Opposition No. 91162831 were served by air Mail, postage pre-paid to:

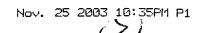
TTAB
P.O. Box #1451
Alexandria, VA 22313-1451
this 30th day of November 2005.

CERTIFICATE OF MAILING

I hereby certify that a copy of the foregoing Opposer's Cross-Motion for Summary Judgment in Response to Applicant's Motion for Judgment for Opposer's Failure to Prove the Case in Opposition No. 911612831 was served by first class air mail, postage pre-paid upon Applicant's attorney, Marina E. Volin, Esq., Caesar, Rivise, Bernstein, Cohen & Pokotilow. Ltd. at 11th Floor-Seven Penn Center, 1635 Market Street Philadelphia. PA 19103-2212 this 30th day of November 2005.

Gail E. Nickols

Ex A



Republica Moldova mun. Chişinau Societate pe Acțiuni de tip deschis "AROMA"



MD-2004, Chişināu, str. Toma Ciorbă nr. 38, tel.: (373-2) 200-651, 200-656, fax : (373-2) 246-751, 210-747 www.aroma.md E-mail: aroma@moldova.md

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MD-2004, Кищинэу, ул. Тома Чорбэ, 38, тел.: (373-2) 200-651, 200-656, факс : (373-2) 246-751, 210-747 www.aroma.md

E-mail: aroma@moldova.md

LETTER OF APPOINTMENT TO WHOME IT MAY CONCERN

Please accept this Letter of Appointment explicity awarding D&M New World Management Inc.DBA Apollo Fine Spirits located at 55 Northern Boulevard Suite 201, Great Neck NY 11021, authority to import and distribute "Aroma" white stork and black stork brandy on the territory of the USA.

19 February 2002

General Direct

Gontsa S.F.

Republica Moldova "mun. Chişinău Societate pe Acțiuni de tip deschis "AROMA"



MD-2004, Chişinău, str. Toma Ciorbă nr. 38, tel.: (373-2) 200-651, 200-656, fax : (373-2) 246-751, 210-747 www.aroma.md

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MD-2004, Кишинэу, ул. Тома Чорбэ, 38, тал.: (373-2) 200-651, 200-656, факс: (373-2) 246-751, 210-747 www.aroma.md
Е-mail: aroma@moldova.md

TO THE COMMISSIONER FOR TRADEMARK

This letter is to confirm that Joint Stock Company "AROMA" of the Republic of Moldova is the only producer of brandy "Black Stork" and is the owner of "Black Stork" Trademark registration 7005.

Trade House "Aroma" located at Beregovoi, 5 str. Moscow, Russia has no rights at all sell and to register Trademark "Black Stork" in the United States of America not in any other countries.

Our official Representative and Distributor in the United States is D&M New World Management Inc. DBA "APOLLO FINE SPIRITS" LOCATED AT 55 Northern BLVD Suite 201, Great Neck NY 1102.

Ruslan Garbali General Manager Allef

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CERTIFICAT DE ORIGINE A MĂRFURILOR CERTIFICATE OF GOODS ORIGIN

Exportator (denumirea, adresa completă, tara) Exporter (name, address, country) CERTIFICAT Nr.0051492 CERTIFICATE No. SATD,c/f207990 MUN.CHISINAU \$EC. CENTRU STR. TOMA CIORBA, 38, R. Moldova 3. Emis in tara Issued in country 2. Destinatar (denumirea, adresa completă, țara) Consignee (name, address, country) Republic of Moldova D&M NEW WORLD MANAGEMENT INC DBA "Apollo Fine Spirits" 55 Northern Boulevard Great Neck, New York 10021, U.S.A. 4. Informatii privind transportul 5. Observatii ale autorităților competente Information of transport Remarks of a Competent Authority Combined transport 10. Greutatea 6. Nr. ert. 7. Marcarea 8. Numărul și natura ambalajelor 9. Criteriul brută sau alte unități de 11. Numarul Denumires marfurilor Number & Type of Packing Goods name # Nr. coletelor de origine Origin si data facturilor Invoice Nr. & Packing & MARIE Gross weight or Marking criteria other measurement date 750 White Stork brandy V.S.O.P. 0.75 1 1 11625/ 226 of 9000bottle poxes **09.10.** 6750 Moldova YKINYHA 2002 Biaropog-Raio regusa agrigat ork brandy VIS. 2b0 White 0.75 1 3100/ poxes 1 1 10 0 2 12 1000 bottle 1800 Moldova Black Bigork Homendar Poster 50 .775/ 0.751boxes Moldova 450 buubottle ----------------12. Viza 13. Declarația exportatorului Export Declaration Signature Prin prezenta se confirma veridicitates cicola Subsemnatul declar că m ness certificatum a decired above are in a hataining Certi exportatorului indeplinese conditiile Confirms the authenticity of The undersigned docide CCI RM conformity with the obtaining Certificate

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BRAND NAME (Reg	D & M NEW WORLD MANAGEMENT INC. DBA: APOLLO FINE SPIRITS
AROMA	55 NORTHERN BOULEVARD SUITE 201
CLASS AND TYPE (Required) (Includes wine varietal designation, if applicable).	GREAT NECK NY 11021
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	ART II - APPLICANT'S CERTIFICATION
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This certificate is issued subject to apple 1. Date ISSUED 22. AUTHORIZED SIGNATURE OCT 10 2002 ALLOSSO DUALIFICATIONS PRODUCT OF MOLDOVA PRODUCT OF MOLDOVA PROPULATIONS PROPULATIO	BLACK STORK BRANDY EXPIRATION DATE (If any) BLACK STORK BRANDY EXPIRATION DATE (If any) EXPIRATION DATE (If any) Produced and bottled by AROMAN Republic of Moldova Net contents 100 Product Any BLACK STORK BRANDY EXPIRATION DATE (If any) BLACK STORK BRANDY EXClusive Imported by D&M New World Management Inc, DBA « APOLLO FINE SPIRITS» Great Neck, NY 11021 Produced and bottled by AROMAN Republic of Moldova Net contents 750 Mi. ALC 405 BY VOL. GOVERNMENT WARNING: 1) According to this surgeon general, women should not drink alcoholic beyenares
This cerumente is issued subject to app 1. DATE ISSUED 22. AUTHORIZED SIGNATURE OCT 10 2002 PRODUCT OF MOLDOVA PROPUCT OF	DALIA KOHLER PART III - ATF CERTIFICATE PICE DISABLE IAWS, regulations and conditions as sat forth on the back of this form. E, BUREAU OF ALCOHOL, TOBACCO AND FIREARMS FOR ATF USE ONLY SA. WHEN NEW LABELS ARE PRINTED. ALO DUCCEM ON HE OLD PROPERTY OF THE OLD CORPORATION THE SCHOOLSHAFE AT WARRINGS STATEMENT OF THE OLD CORPORATION DATE (If any,) BLACK STORK BRANDY EXPIRATION DATE (If any,) EXPIRATION DATE (If any,) BLACK STORK BRANDY Exclusive Imported by D&M New World Management Inc, DBA « APOLLO FINE SPIRITS» Great Neck, NY 11021 Produced and bottled by "AROMA" Republic of Moldova NEI CONTENTS 75 MI. ALC 40% BY VOL. GOVERNMENT WARNING: 1) According to the surgeon general, women should not drink alcoholic beverages diffing pregnancy because of the 16% of birth defects.
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TF F 5100.31 (4-96) PREVIOUS EDITIONS ARE OBSOLETE

H. JOHN CAMPAIGN JOHN M. KEENE O CHARLES H. KNULL + GAIL E. NICKOLS WILLIAM C. WRIGHT O Graham, Campaign e.c.

The Bar Bullding 36 West 44th Street New York, New York 10036-8178 U.S.A.

Tel. (212) 354-5650 Fax (212) 354-6354 E-Mail gracam@aol.com www.grahamcampaign.com

OF COUNSEL:
DAVID ARENS
ARES DEMETRIUS AXIOTIS ◆
GERARD H. DAVIS ◆
CHARLES E. TEMKO

- ALSO ADMITTED IN N.J.
- ALSO ADMITTED IN CT.
- + ALSO ADMITTED IN D.C.

March 24, 2005

Casesar, Rivise, Bernstein, Cohen & Pokotilow, Ltd. Seven Penn Center-11th floor 1635 Market Street Philadelphia, PA 19103-2212

Attention: Marina E. Volin

RE: Opposition No. 91162831 BLACK STORK Your ref: B1200-40001

Dear Ms. Volin:

While I can appreciate that your client does not want to admit they are not the prior user, I do think the use of three separate sets of questions borders on the ridiculous. However, perhaps they can apply that same determination to calling five listed distributors for my client's BLACK STORK brandy and learn the facts for themselves, thereby saving time and money.

- 1. Bay Way World Liquors- (908)-353-6300
- 2. Clifton Discount Liquors-(973)-253-2331
- 3. Roger Wilco (856)-665-3456
- 4. Oksamit Liquors (718)-36803115
- 5. Soureville Plaza Wine and Liquors-(732)-721-8800

I trust this will help to convince your client that the shipment of over 12,000 bottles of BLACK STORK has not been solely for internal consumption and negates any possibility of "token use."

After such due diligence, can we proceed with the drafting of the abandonment of your client's application?

Very truly yours. Gail E. Nickols EX.

NJ LIC # LE 112 / 2005 2005 | NJ LIC # 3402-23-737-001 |

invoice Invoice #

4903

Date 11/27/2003

Phone 518-584-5600 Fax 516-564-5677

Bill To L'Chaim wine liquor's 127 Brighton Beach Avenue Brooklyn, NY 11235 718 -996-6410

Ship To L'Chaim wine liquor's 127 Brighton Beach Avenue Brooklyn, NY 11235 718-996-6410

	Pick	Picking list	Terms	Oue Date	Rep	Ship D	ate ILI	LIDNO
			Net 30	12/27/2002	MS	11 27 2	002	
item	Qty	T	Descr	iption		Net Price	Discount	Amount
VBS16 VBW12 VBB14 VBS16B	2 2 2 1 9	White sta	ork VS brandy ork brandy VSC ork X.O. brandy ork VS Brandy	OP 12/750 (12/750	Ì	132,00 156,00 179,88 11,00	119.88 143.88 167.88 9.99	239,76 287 76 167,88 89,91
# OF CASI	ES RECTO	1	· · · · · · · · · · · · · · · · · · ·	<u> </u>		Total		\$785.31
SIGNA PRINT	3 T	1		Make All C	hecks Pay	able to Al- uite 201 On	OLLO FINE rat Neck NY	SPIRITS 11021

The seller has assumed payment of or has paid the New York state and when applicable NYC of cholic beverage tax

AUOHO FIRE SDIFILS 50 Hempstead Gardens Drive West Hempstead NY 11552 NJ LIC # 3402-23-237-001 invoice Date Invoice # 11/27/2001 4987 Phone 516-564-5600 Fax 516-564-5677 Bill To Ship To G.I. Wine liqour DELIVERY AFTER 9:30 AM 1709 Voohries Avenue Brooklyn, NY 11235 718 -332-2800 Rep Picking list Terms Due Date Ship Date ILL ID NO Net 30 12/27/2002 LD 11.27.2002 Item Qty Description Net Price Discount Amount VBS16 2 White stork VS brandy 12/750 132,00 119.88 239.76 VBW12 8 White stork hrandy VSOP 12/750 156.00 179.88 143.88 1.151.04 VBB14 5 Black stork brandy 12/750 167.88 839 40

DATE:

SIGNATURE

PROFT MANE

STORY AND STORY OF THE STOR

Make All Checks Payable to APOLLO FINE SPIRES
55 Northern BLVD Suite 201 Great Neck NY 11021

\$2,230.20

The seller has assumed payment of or has paid the New York state and when applicable NYC δt sholic beverage tax

NY LIC # LL 1127668 203 NJ LIC # 3402-23-737-001

Invoice

Date Invoice # 11/27/2001 4986

Phone 516-564-5600 Fax 516-564-5677

Bill To Homecrest Wine Liquor 1233 Avenue U Brooklyn, NY 11229 718 -375-2687

Ship To

Homecrest Wine Liquor 1233 Avenue (1) Brooklyn NY 11229 718-375-2687

	Pick	ing list	Terms	Due Date	Rep	Ship D	ate IL	L ID NO
			Net 30	12/27/2002	MS	11/27/2	(H)2	
Item	Qty		Desc	ription		Net Price	Discount	Amount
VBS16	4	White st	ork brandy 12/7	'50		132.00	119.88	479.53
VBW12	5	White st	ork brandy vsor	12/750		56.00	143.88	719.40
VBB14	1	Black ste	ork brandy 12/7	50	l li	79.88	167.88	167.88
VBD14	6	Danty B	randy frosted bi	12/1it	i i	56.00	120.00	720,00
VBD12	4	Danty B	randy frosted bt	1 12/750	H	10.00	96.00	384.00
ZWA32	1	Armagn	ac Delord VS 6	750	i i	13.94	107.94	107.9-
KF102	l t	Frizza m	ellow white 12	/750	- 13	74.00	64.00	64.00
KF104	1.	Frizza m	ellow Red 12/7	50	- 1	74.00	64.00	64.00
AND COM	\$ NGC-10"	ź.,				Total		\$2,706.74

Make All Checks Payable to APOLLO FINE SPIRITS
55 Northern BLVD State 201 Great Neck NY 11021

ADUITO FIRE SDIFITS 50 Hempstead Gardens Drive West Hempstead NY 11552

NJ LIC # 3402-23-737-001

шуоке

Date Invoice # 11/27/2002 4988

Phone 516-564-5600 Fax 516-564-5677 Bill To

Ocean Wine Liquor 514 Brighton Beach Avenue Brooklyn, NY 11235 718 -743-3084

Ship To Ocean wine liquor 514 Brighton Beach Avenue Brooklyn, NY 11235 718-743-3084

Rep Ship Date Picking list Terms Due Date ILL ID NO 12/27/2002 Net 30 BA 11/27/2002 Item Qty Description Net Price Discount Amount VBS16 White stork VS brandy 12/750 132.00 119.88 959.04 VBW12 White stork brandy VSOP 12/750 156.00 179.88 143.88 143.88 VBB14 Black stork X.O. brandy 12/750 167.88 167.88 E.OF.CRSES BICCO Total \$1,270.80

Make All Checks Payable to APOLLO FINE SPIRITS 55 Northern BLVD Suite 201 Great Neck NY 11021

The seller has assumed payment of or has paid the New York state and when applicable NYC alcoholic heverage tax

NY LIC # LL 1127668 203 NJ LIC # 3402-23-737-001

Invoice

Date Invoice # 12/3/2002 5022

Phone 516-564-5600 Fax 516-564-5677

Bill To

Silver Dreams wine liquor 1053 Brighton Beach avenue Brooklyn, NY 11235 718 -934-4860

Ship To Silver Dreams wine liquor 1053 Brighton Beach avenue Brooklyn NY 11235 718-934-4860

	Pick	ing list	Terms	Due Date	Rep	Ship D	ate	LL ID NO
		T Net 30 1/2/2003 MS 12					002	
Item	Qty		Descri	ption	, i	Net Price	Discoun	Amount
/L124	8	Lautrec	cognac vsop 1' ci	ru (Round) 12/	750	181.88	169.8	1,359.04
√L130	3		cognac X.O I' cr			279.00	259.0	777.00
ZWA06	1	Bas-arm	agnac X.O decar	nter "Fidji" 12/	375	227.88	203.8	8 203.88
ZWA08	1 1	Bas-Am	nagnac XO "DIV	A* 6/750		227.94	185.9	4 185.94
ZWA10	1	Bas-arm	agnac "Helios" l	985 6/750		317.94	293.9	4 293.94
VBB14	2	Black st	ork X.O. brandy	12/750		179.88	167.8	
VBS16	2	White st	ork VS brandy 1	2/750		132.00	119.8	
VBW12	2	White st	ork brandy VSO	P 12/750		156.00	143.8	8 287.76
# OF CAS	ES RECTO	alia A				Total		\$3,683.0
SIGNA	772.00		7.06	Note All	Checke Po	yable to Al	OLLOFIN	F SPIRITS
PRINT	NAME	. ·		55 Northe	m BLVD	Suite 201 Gr	eat Neck N	Y 11021

NY LIC # LL 1127668 203 NJ LIC # 3402-23-737-001

Invoice

Date Invoice # 12/3/2002 5024

Phone 516-564-5600 Fax 516-564-5677

Bill To

Avenue X Wine Liquor 245 Avenue X Brooklyn, NY 11223 718 -375-9707

Ship To Avenue X Wine Liquor 245 Avenue X Brooklyn NY 11223 718-375-9707

	Pick	ing list	Terms	Due Date	Rep	Ship D	ate IL	L ID NO
		FT	Net 30	1/2/2003	MS	12 3/20	102	
Item	Qty		Descri	iption		Net Price	Discount	Amount
VBW12	2	White st	ork brandy VSO	P 12/750		156.00	143.88	287.76
VBB14	1	Black ste	ork X.O. brandy	12/750		179.88	167.88	167.88
VD204	1	Sobieski	vođka 12/750			172.00	140.00	140.00
VD206	ı	Sobieski	vodka 12/1LT		ļ	188,00	160.00	160.00
VD208	1	Sobi ck i ¹	vodka 6/1.75ML			160,00	140.00	140,00
						!		
# OF CASES	BESCT)	10 A				Total		\$895.64

The seller has assumed payment of or has paid the New York state and when applicable NYC alcoholic beverage tax